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20 MAY 2008

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Kenyon & Kenyon, LLP
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New York, New York 10004

In re Application of: KOCHER, Pascal :
Application No.: 10/574,208 :
PCT No.: PCT/DE04/01630 : DECISION ON REQUEST
Int. Filing Date: 22 July 2004 :
Priority Date: 28 October 2003 :
Attorney Docket No.: 101914206 :
For: DEVICE FOR FATIGUE WARNING IN :
MOTOR VEHICLES HAVING A :
RUN-UP ALARM SYSTEM :

This decision is issued in response to applicant's "Response to Decision on Request to Withdraw Holding Of Abandonment" filed 06 May 2008, treated herein as a renewed petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 22 July 2004, applicant filed international application PCT/DE04/01630 which claimed a priority date of 28 October 2003 and which designated the United States. On 19 May 2005, a copy of the international application was communicated to the United States Patent And Trademark Office (USPTO) by the International Bureau (IB). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 28 April 2006.

On 30 March 2006, applicant filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee, a copy of the international application, and a preliminary amendment.

On 08 March 2007, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that a properly executed oath or declaration in compliance with 37 CFR 1.497 was required.

On 16 November 2007, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to respond to the Notification Of Missing Requirements.

On 11 December 2007, applicant filed a petition under 37 CFR 1.181. In a decision dated 24 April 2008, applicant's petition was dismissed without prejudice.

On 06 May 2008, applicant filed a renewed petition under 37 CFR 1.181. Applicant states in the present petition that the response to the Notification of Missing Requirements was previously submitted on 08 May 2007.

DISCUSSION

Applicants state in their present petition that a declaration and power of attorney was received at the United States Patent and Trademark Office on 08 May 2007. A review of the present application reveals that the declaration is not located therein. Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

"If a receipt of any paper filed in the Patent and Trademark Office is desired, it may be obtained by enclosing with the paper a self-addressed postcard identifying the paper. The Patent and Trademark Office will stamp the receipt date on the card and place it in the outgoing mail.

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Here, applicant has provided a copy of the declaration and a copy of their date-stamped filing receipt. The receipt identifies the application by the application number and attorney docket number. The receipt itemizes a declaration. The receipt is stamped "Rec'd PCT/PTO 08 May 2007" across its face is sufficient to indicate that the above item was in fact received in the Office on 08 May 2007.

CONCLUSION

Applicant's petition under 37 CFR 1.181 is **GRANTED**.

In view of the declaration filed 08 May 2007, the Notification of Abandonment (Form PCT/DO/EO/909) dated 16 November 2007 is hereby **VACATED**.

The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision.



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